

(2010) 07 DEL CK 0087

In the Delhi High Court

Case No : Writ Petition (C) 11252 of 2009

Union of India (UOI)

APPELLANT

Vs

J.P. Singh

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Citation : (2010) 07 DEL CK 0087

Hon'ble Judges : Pradeep Nandrajog, J;Mool Chand Garg, J

Bench : Division Bench

Advocate : Manpreet Kaur, for the Appellant; Sanjay Kumar, for the Respondent

Judgement

Pradeep Nandrajog, J.—Union of India has sought quashing of the order dated 3.2008 passed by the Central Administrative Tribunal allowing OA No. 26/2008.

2. It is not in dispute that the respondent J.P. Singh has retired from service and holds a lifelong CGHS card entitling him and his dependant i.e. his wife to medical facilities as per the scheme.

3. It is also not in dispute that various instructions have been issued under the scheme from time to time and one such instruction is dated 7th September 2001 which envisages that in case of non-emergency situations, beneficiaries of the schemes are entitled to medical reimbursement for treatment only in such hospitals or diagnostic centers which are recognized under the scheme but subject to written permission from the competent authority.

4. It is apparent, that there exists an office memorandum listing various hospitals/diagnostic centers where the CGHS beneficiaries can avail of medical facilities, but same has not been filed before us.

5. But, what should happen in the case of emergency? Neither a policy nor a circular has been shown to us which deals with the said situation.

6. Now, when would ill luck strike a person? Nobody can predict.

7. With the aforesaid backdrop it needs to be noted that at around 8:30 AM on 5.4.2007, the condition of Ms. Shanti Devi, the wife of the respondent, suddenly deteriorated and she was rushed by the respondent to Apollo Hospital, where, as per medical record shown to us, she was found in a very critical condition. She was suffering from a cardiac problem which necessitated, as per opinion of the doctor concerned, a permanent pacing.

8. A bill raised by the hospital was cleared by the respondent and in turn he submitted the bill to the petitioner for reimbursement.

9. The bill was not honoured i.e. no money was reimbursed by the petitioner on the plea that the respondent could not have taken his wife to Apollo Hospital, which otherwise is listed as a hospital by the respondent where CGHS beneficiaries can avail medical benefit, on account of no prior written permission being taken from the competent authority.

10. Unfortunately for the respondent, rather than projecting that neither the CGHS scheme nor any circular thereunder contemplates the course of action to be adopted in case of emergencies, ill advise by somebody, he took the plea that the day in question i.e. 5.4.2007 was declared a holiday on account of elections to be held in the Union Territory of Delhi to elect Municipal councillors and hence Government hospital were closed. On this premise the respondent justified rushing his wife to a private hospital.

11. Needless to state the competent authority of the petitioner immediately responded that emergency facilities are always available in Government hospitals notwithstanding a particular day being declared a holiday.

12. This has been found to be an irrelevant consideration by the Central Administrative Tribunal.

13. Indeed, the issue is not whether Government hospitals were providing emergency medical treatment on the day in question or not. The issue at hand is whether, in case of an emergency, prior permission from a competent authority is necessary for availing medical treatment at a private hospital listed as a hospital wherefrom a CGHS medical health scheme beneficiary can avail necessary medical aid. If not, what has to be done?

14. In our opinion the answer, commonsense tells us, is that in case of emergency, there being no time to comply with the procedures of the policy, it would be open to the beneficiary to avail medical facility at any notified hospital. It is settled law that the doctrine of necessity comes into play where there is no express legal rule on the subject and there is a compelling urgency. The doctrine of necessity requires a commensurate response to a situation so that normalcy can be restored.

15. In the context of a heart problem, the doctrine of necessity would require the patient to be rushed to the nearest hospital without any loss of time so that the patient can be rescued.

16. To this extent we are in agreement with the final decision taken by the Tribunal, though not on the reasoning of the Tribunal, that the respondent was fully justified in taking his wife to Apollo Hospital as his wife came under sudden distress and if medical treatment was not given to her with promptness, it would have been fatal to her life.

17. It is urged by learned Counsel for the petitioner that the actual grievance of the petitioner is not that the respondent rushed his wife to Apollo Hospital but to the fact that a permanent pacing was done. Counsel states that the objection of the petitioner is to the fact that temporary pacing ought to have been got done for the reason it costs less money and thereafter permission ought to have been taken for implanting a permanent pacemaker and for which the competent authority would have seen whether the said procedure could be performed at a Government hospital, where we presume it would have cost less.

18. This plea is negated by us for the reason once a patient, and that too in a critical condition, is in the hands of an expert doctor, what medical treatment has to be given is a decision of the doctor concerned.

19. It cannot be lost sight of the fact that the wife of the respondent required a pacemaker to be inserted. Everybody knows that intervention into the body causes distress and therefore it is not advisable to repeatedly resort to such procedures which require an intervention into body. The medical papers of the wife of the respondent shows that she was 62 years of age as on the date when she underwent the interventional surgery of implanting a pacemaker and thus it is quite obvious that the specialist doctor thought that rather than resorting to a temporary pace-making, it would be better if permanent pace-making was resorted to.

20. Thus, we hold that the respondent would be entitled to reimbursement for the medical expenses pertaining to the medical illness of his wife.

21. But, what should they be?

22. Unfortunately, the Tribunal has not decided the issue inasmuch as it has simply been said that the entire bill raised by Apollo Hospital should be reimbursed.

23. Learned counsel for the respondent does not dispute that the Government has notified rates at which reimbursement is to be made even when a person undertakes medical aid at a private hospital and thus we dispose of the writ petition partially modifying the direction issued by the Tribunal. We direct the competent authority of the petitioner to decide, with reference to the rates prescribed by the petitioner as to what sum needs to be reimbursed to the respondent treating the claim of the respondent as the maintainable claim. We clarify that the competent authority would not treat the claim inadmissible on account of prior permission not being taken. It would be treated as a case akin to prior permission being granted.

24. We find that the petitioner has deposited certain money in this Court.

25. In view of our direction hereinabove which requires a redetermination of the issue we direct that the money deposited by the petitioner pursuant to interim orders passed by this Court be refunded to the petitioner together with accrued interest thereon, if any. Needless to state, such amount as may be determined as payable to the respondent would be paid by the petitioner within a period of 6 (six) weeks from today failing which the said amount would be payable with interest calculated @ 12% per annum reckoned with effect from 6 (six) weeks from today till date of payment.

26. No costs.